

DISQUALIFYING EVENTS SUMMARY (Draft #2)
SJ7 Workgroup

This summary represents the consensus of the workgroup activities from the December 2007 meeting and a January meeting of a subcommittee for identifying and defining the disqualifying events that would apply for Montana. In preparing this document, the department reviewed the 10 states specified by the workgroup and compared those disqualifiers to what exists in Montana law.

The workgroup began work and discussion on this list on December 5, 2007 and the preference was to identify permanent disqualifiers and disqualifiers that are a concern but are identified as other than permanent. The other than permanent disqualifiers would be discussed later regarding aging out of offenses, similar to the methodology used in other states. There was also brief discussion regarding appeals that the department staff was looking into for the January meeting. In the subcommittee meeting on January 21, 2008 the group identified an option of “reportable” events that would basically notify the employer that there was an item from the background check that the employer would want to be aware of and discuss with the employee in order to make an informed decision regarding employment or continued employment.

This document has not been completed regarding general consensus of the workgroup as several items noted as “TBD” need to be discussed. This discussion will occur at the January 29th and 30th meeting of the workgroup.

The “aged out offenses” are certain crimes considered a disqualifier for a designated number of years. Example: 5 years

In Montana, crimes fall into Felony or Misdemeanor level at the penalty phase. If jail time for the offense is one year or more then the crime is classified as a Felony. If the jail time for the offense is under one year, then the crime is classified as a Misdemeanor.

Montana Disqualifier List
January 2008

Montana Crimes	Permanent Disqualifier	Other than Permanent	Aged out offenses
Chap 5--Offenses Against a Person			
PART 1 Homicide			
45-5-102. Deliberate homicide	X		
45-5-103. Mitigated deliberate homicide	X		
45-5-104. Negligent homicide	X		

Montana Crimes	Permanent Disqualifier	Other than Permanent	Aged out offenses
45-5-105. Aiding or soliciting suicide	X		
45-5-106. Vehicular homicide while under influence	X		
PART 2 Assault and related offenses			
45-5-201. Assault		X	5 years
45-5-202. Aggravated assault	X		
45-5-203. Intimidation		X	5 years
45-5-204. Mistreating prisoners	X		
45-5-205. Negligent vehicular assault	X		
45-5-206. Partner or family member assault		X	5 years
45-5-207. Criminal endangerment		X	5 years
45-5-208. Negligent endangerment		X	
45-5-209. Partner or family member assault -- no contact order		X	5 years
45-5-210. Assault on peace officer or judicial officer	X		
45-5-211. Assault upon sports official		X	5 years
45-5-212. Assault on minor			TBD
45-5-213. Assault with weapon		X	5 years
45-5-214. Assault with bodily fluid		X	5 years
45-5-220. Stalking		X	5 years
45-5-221. Malicious intimidation or harassment relating to civil or human rights		X	5 years
45-5-223. Surreptitious visual observation or recordation		X	5 years
PART 3 Kidnapping			
45-5-301. Unlawful restraint		X	5 years
45-5-302. Kidnapping	X		
45-5-303. Aggravated kidnapping	X		
45-5-304. Custodial interference		X	5 years
45-5-305. Subjecting another to involuntary servitude		X	5 years
45-5-306. Trafficking of persons for involuntary servitude	X		
PART 4 45-5-401. Robbery	X		
PART 5 Sexual Crimes			

Montana Crimes	Permanent Disqualifier	Other than Permanent	Aged out offenses
45-5-502. Sexual assault	X		
45-5-503. Sexual intercourse without consent	X		
45-5-504. Indecent exposure	X		
45-5-505. Deviate sexual conduct.			TBD
45-5-507. Incest	X		
PART 6 Offenses Against the Family			
45-5-601. Prostitution		X	
45-5-602. Promoting prostitution	X		
45-5-603. Aggravated promotion of prostitution	X		Note: End of 12/5/07 discussion
45-5-611. Bigamy		X	Note: Subcommittee work 1/21/08
45-5-612. Marrying a bigamist		X	
45-5-621. Nonsupport		X	
45-5-622. Endangering welfare of children	X		
45-5-623. Unlawful transactions with children	X		
45-5-624. Unlawful attempt to purchase or possession of intoxicating substance		X	
45-5-625. Sexual abuse of children	X		
45-5-626. Violation of order of protection		X	
45-5-627. Ritual abuse of minor			TBD
45-5-631. Interference with parent-child contact		X	
45-5-632. Aggravated interference with parent-child contact		X	
45-5-634. Parenting interference		X	
45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited		X	
Chapter 6—Offenses Against Property			
PART 1 Criminal Mischief and Arson			

Montana Crimes	Permanent Disqualifier	Other than Permanent	Aged out offenses
45-6-101. Criminal mischief	X		
45-6-102. Negligent arson	X		
45-6-103. Arson	X		
45-6-104. Desecration of capitol, place of worship, cemetery, or public memorial			TBD
45-6-105. Criminal destruction of or tampering with communication device			TBD
PART 2 Criminal trespass and burglary			
45-6-202. Criminal trespass to vehicles		X	
45-6-203. Criminal trespass to property		X	
45-6-204. Burglary			TBD
45-6-205. Possession of burglary tools			TBD
PART 3 Theft and Related Offenses	X		
45-6-301. Theft	X		
45-6-302. Theft of lost or mislaid property			TBD
45-6-303. Offender's interest in the property			TBD
45-6-305. Theft of labor or services or use of property			
45-6-306. Obtaining communication services with intent to defraud		X	
45-6-307. Aiding the avoidance of telecommunications charges		X	
45-6-308. Unauthorized use of motor vehicles		X	
45-6-309. Failure to return rented or leased personal property		X	
45-6-311. Unlawful use of a computer		X	
45-6-312. Unauthorized acquisition or transfer of food stamps		X	
45-6-313. Medicaid fraud	X		
45-6-314. Theft by disposal of stolen property		X	
45-6-315. Defrauding creditors		X	
45-6-316. Issuing a bad check.		X	
45-6-317. Deceptive practices			TBD
45-6-318. Deceptive business practices			TBD
45-6-319. Chain distributor schemes		X	

Montana Crimes	Permanent Disqualifier	Other than Permanent	Aged out offenses
45-6-325. Forgery	X		
45-6-326. Obscuring the identity of a machine		X	
45-6-327. Illegal branding or altering or obscuring a brand		X	
45-6-332. Theft of identity	X		
45-6-341. Money laundering		X	
Chapter 7—Offenses Against Public Administration			
PART 1 Bribery and Corrupt Influence			
45-7-101. Bribery in official and political matters.		X	
45-7-102. Threats and other improper influence in official and political matters		X	
45-7-103. Compensation for past official behavior		X	
45-7-104. Gifts to public servants by persons subject to their jurisdiction		X	
PART 2 Perjury and Other Falsification in Official Matters			
45-7-201. Perjury.		X	
45-7-202. False swearing		X	
45-7-203. Unsworn falsification to authorities		X	
45-7-204. False alarms to agencies of public safety		X	
45-7-205. False reports to law enforcement authorities		X	
45-7-206. Tampering with witnesses and informants.		X	
45-7-207. Tampering with or fabricating physical evidence.		X	
45-7-208. Tampering with public records or information		X	
45-7-209. Impersonation of public servant		X	
45-7-210. False claim to public agency		X	
PART 3 Obstructing Governmental Operations			
45-7-301. Resisting arrest		X	
45-7-302. Obstructing peace officer or other public servant.		X	
45-7-303. Obstructing justice		X	
45-7-304. Failure to aid a peace officer.		X	
45-7-305. Compounding a felony		X	
45-7-306. Escape.		X	

Montana Crimes	Permanent Disqualifier	Other than Permanent	Aged out offenses
45-7-307. Transferring illegal articles -- unauthorized communication		X	
45-7-308. Bail-jumping.		X	
45-7-309. Criminal contempt.		X	
PART 4 45-7-401. Official misconduct		X	
PART 5 45-7-501. Employer misconduct		X	
Chapter 8—Offenses Against Public Order			
PART 1 Conduct Disruptive of Public Order			
45-8-101. Disorderly conduct.		X	
45-8-102. Failure of disorderly persons to disperse		X	
45-8-103. Riot		X	
45-8-104. Incitement to riot.		X	
45-8-105. Criminal incitement.		X	
45-8-106. Bringing armed men into the state		X	
45-8-109. Civil disorder -- prohibited activities		X	
45-8-110. Obstructing health care facility access		X	
45-8-111. Public nuisance.		X	
45-8-112. Action to abate a public nuisance		X	
45-8-113. Creating a hazard		X	
45-8-114. Failure to yield party line		X	
45-8-115. Illegal posting of state and federal land		X	
45-8-116. Funeral picketing -- penalties		X	
PART 2 Offensive, indecent and inhumane conduct			
45-8-201. Obscenity			TBD
45-8-206. Public display or dissemination of obscene material to minors			TBD
45-8-209. Harming a police dog -- penalty		X	
45-8-210. Causing animals to fight -- owners, trainers, and spectators			TBD
45-8-211. Cruelty to animals -- exceptions			TBD
45-8-212. Criminal defamation		X	
45-8-213. Privacy in communications		X	
45-8-214. Bribery in contests		X	

Montana Crimes	Permanent Disqualifier	Other than Permanent	Aged out offenses
45-8-215. Desecration of flags		X	
45-8-216. Unlawful automated telephone solicitation		X	
45-8-217. Aggravated animal cruelty			TBD
45-8-220. Criminal invasion of personal privacy.			TBD
PART 3 Weapons			
45-8-303. Possession or use of machine gun in connection with a crime	X		
45-8-304. Possession or use of machine gun for offensive purpose	X		
45-8-305. Presumption of offensive or aggressive purpose	X		
45-8-313. Unlawful possession of firearm by convicted person	X		
45-8-314. Lifetime firearms supervision of certain convicted persons	X		
45-8-316. Carrying concealed weapons		X	
45-8-318. Possession of deadly weapon by prisoner or youth in facility.	X		
45-8-327. Carrying a concealed weapon while under the influence.		X	
45-8-328. Carrying concealed weapon in prohibited place			TBD
45-8-331. Switchblade knives			TBD
45-8-333. Reckless or malicious use of explosives			TBD
45-8-334. Possession of a destructive device			TBD
45-8-335. Possession of explosives			TBD
45-8-336. Possession of a silencer			TBD
45-8-339. Carrying firearms on train -- penalty			TBD
45-8-340. Sawed-off firearm			TBD
45-8-361. Possession or allowing possession of weapon in school building			TBD
Chapter 9—Dangerous Drugs			
PART 1 Offenses involving Dangerous Drugs			TBD – Entire Section
45-9-101. Criminal distribution of dangerous drugs			
45-9-102. Criminal possession of dangerous drugs			
45-9-103. Criminal possession with intent to distribute			
45-9-104. Fraudulently obtaining dangerous drugs			

Montana Crimes	Permanent Disqualifier	Other than Permanent	Aged out offenses
45-9-105. Altering labels on dangerous drugs			
45-9-107. Criminal possession of precursors to dangerous drugs			
45-9-109. Criminal distribution of dangerous drugs on or near school property			
45-9-110. Criminal production or manufacture of dangerous drugs			
45-9-112. Criminal distribution of imitation dangerous drug			
45-9-113. Criminal possession of imitation dangerous drug with the purpose to distribute			
45-9-114. Criminal advertisement of imitation dangerous drug			
45-9-115. Criminal manufacture of imitation dangerous drug			
45-9-121. Criminal possession of toxic substances			
45-9-125. Continuing criminal enterprise			
45-9-127. Carrying dangerous drugs on train			
45-9-132. Operation of unlawful clandestine laboratory			
Title 61—Driving Under the Influence of Alcohol or Drugs (61-8-401)			
DUI			TBD
**Habitual Offender			TBD

Habitual Offender –DUI Title 61-8-732, MCA allows for certain treatment options depending upon the number of convictions. For example, a 1st time offender must be evaluated for chemical dependency and if found to be chemically dependent, must attend treatment. A 2nd or subsequent offense—the offender must attend treatment and is then monitored for at least one year. In these cases, the sentence is typically suspended.